

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ARTURO PALACIOS,	)	Case No. CV 11-2205 JC
Plaintiff,	)	
v.	)	MEMORANDUM OPINION
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of Social	)	
Security,	)	
Defendant.	)	

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**I. SUMMARY**

On March 21, 2011, plaintiff Arturo Palacios (“plaintiff”) filed a Complaint seeking review of the Commissioner of Social Security’s denial of plaintiff’s application for benefits. The parties have consented to proceed before a United States Magistrate Judge.

This matter is before the Court on the parties’ cross motions for summary judgment, respectively (“Plaintiff’s Motion”) and (“Defendant’s Motion”). The Court has taken both motions under submission without oral argument. See Fed. R. Civ. P. 78; L.R. 7-15; March 22, 2011 Case Management Order ¶ 5.

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1 Based on the record as a whole and the applicable law, the decision of the  
2 Commissioner is AFFIRMED. The findings of the Administrative Law Judge  
3 (“ALJ”) are supported by substantial evidence and are free from material error.<sup>1</sup>

4 **II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE**  
5 **DECISION**

6 On February 26, 2007, plaintiff filed an application for Disability Insurance  
7 Benefits. (Administrative Record (“AR”) 12, 87). Plaintiff asserted that he  
8 became disabled on September 15, 2003, due to lower back pain. (AR 101). The  
9 ALJ examined the medical record and heard testimony from plaintiff (who was  
10 represented by counsel), and a vocational expert on September 1, 2009. (AR 22-  
11 40).

12 On September 24, 2009, the ALJ determined that plaintiff was not disabled  
13 through the date last insured (*i.e.*, December 31, 2008). (AR 12-21). Specifically,  
14 the ALJ found: (1) plaintiff suffered from the following severe impairment:  
15 lumbar spine degenerative disc disease (AR 14); (2) plaintiff’s impairments,  
16 considered singly or in combination, did not meet or medically equal one of the  
17 listed impairments (AR 17); (3) plaintiff retained the residual functional capacity  
18 to perform the full range of medium work (20 C.F.R. § 404.1567(c)) (AR 17);  
19 (4) plaintiff could perform his past relevant work as an inboard motor mechanic  
20 and industrial truck mechanic (as actually and generally performed) (AR 20); and  
21 (5) plaintiff’s allegations regarding his limitations were not credible to the extent  
22 they were inconsistent with the ALJ’s residual functional capacity assessment.  
23 (AR 18).

24 The Appeals Council denied plaintiff’s application for review. (AR 1).

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26 <sup>1</sup>The harmless error rule applies to the review of administrative decisions regarding  
27 disability. See Batson v. Commissioner of Social Security Administration, 359 F.3d 1190, 1196  
28 (9th Cir. 2004) (applying harmless error standard); see also Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1054-56 (9th Cir. 2006) (discussing contours of application of harmless error standard in social security cases).

### 1 **III. APPLICABLE LEGAL STANDARDS**

#### 2 **A. Sequential Evaluation Process**

3 To qualify for disability benefits, a claimant must show that the claimant is  
 4 unable to engage in any substantial gainful activity by reason of a medically  
 5 determinable physical or mental impairment which can be expected to result in  
 6 death or which has lasted or can be expected to last for a continuous period of at  
 7 least twelve months. Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (citing  
 8 42 U.S.C. § 423(d)(1)(A)). The impairment must render the claimant incapable of  
 9 performing the work claimant previously performed and incapable of performing  
 10 any other substantial gainful employment that exists in the national economy.  
 11 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C.  
 12 § 423(d)(2)(A)).

13 In assessing whether a claimant is disabled, an ALJ is to follow a five-step  
 14 sequential evaluation process:

- 15 (1) Is the claimant presently engaged in substantial gainful activity? If  
 16 so, the claimant is not disabled. If not, proceed to step two.
- 17 (2) Is the claimant's alleged impairment sufficiently severe to limit  
 18 claimant's ability to work? If not, the claimant is not disabled.  
 19 If so, proceed to step three.
- 20 (3) Does the claimant's impairment, or combination of  
 21 impairments, meet or equal an impairment listed in 20 C.F.R.  
 22 Part 404, Subpart P, Appendix 1? If so, the claimant is  
 23 disabled. If not, proceed to step four.
- 24 (4) Does the claimant possess the residual functional capacity to  
 25 perform claimant's past relevant work? If so, the claimant is  
 26 not disabled. If not, proceed to step five.
- 27 (5) Does the claimant's residual functional capacity, when  
 28 considered with the claimant's age, education, and work

1 experience, allow claimant to adjust to other work that exists in  
2 significant numbers in the national economy? If so, the  
3 claimant is not disabled. If not, the claimant is disabled.

4 Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1052 (9th  
5 Cir. 2006) (citing 20 C.F.R. §§ 404.1520, 416.920).

6 The claimant has the burden of proof at steps one through four, and the  
7 Commissioner has the burden of proof at step five. Bustamante v. Massanari, 262  
8 F.3d 949, 954 (9th Cir. 2001) (citing Tackett); see also Burch, 400 F.3d at 679  
9 (claimant carries initial burden of proving disability).

#### 10 **B. Standard of Review**

11 Pursuant to 42 U.S.C. section 405(g), a court may set aside a denial of  
12 benefits only if it is not supported by substantial evidence or if it is based on legal  
13 error. Robbins v. Social Security Administration, 466 F.3d 880, 882 (9th Cir.  
14 2006) (citing Flaten v. Secretary of Health & Human Services, 44 F.3d 1453, 1457  
15 (9th Cir. 1995)). Substantial evidence is “such relevant evidence as a reasonable  
16 mind might accept as adequate to support a conclusion.” Richardson v. Perales,  
17 402 U.S. 389, 401 (1971) (citations and quotations omitted). It is more than a  
18 mere scintilla but less than a preponderance. Robbins, 466 F.3d at 882 (citing  
19 Young v. Sullivan, 911 F.2d 180, 183 (9th Cir. 1990)).

20 To determine whether substantial evidence supports a finding, a court must  
21 “consider the record as a whole, weighing both evidence that supports and  
22 evidence that detracts from the [Commissioner’s] conclusion.” Aukland v.  
23 Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (quoting Penny v. Sullivan, 2 F.3d  
24 953, 956 (9th Cir. 1993)). If the evidence can reasonably support either affirming  
25 or reversing the ALJ’s conclusion, a court may not substitute its judgment for that  
26 of the ALJ. Robbins, 466 F.3d at 882 (citing Flaten, 44 F.3d at 1457).

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1 **IV. DISCUSSION**

2 **A. The ALJ Properly Evaluated Plaintiff's Credibility**

3 Plaintiff contends that the ALJ inadequately evaluated the credibility of his  
4 subjective complaints. (Plaintiff's Motion at 4-8). The Court disagrees.

5 **1. Pertinent Law**

6 Questions of credibility and resolutions of conflicts in the testimony are  
7 functions solely of the Commissioner. Greger v. Barnhart, 464 F.3d 968, 972 (9th  
8 Cir. 2006). If the ALJ's interpretation of the claimant's testimony is reasonable  
9 and is supported by substantial evidence, it is not the court's role to "second-  
10 guess" it. Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001).

11 An ALJ is not required to believe every allegation of disabling pain or other  
12 non-exertional impairment. Orn v. Astrue, 495 F.3d 625, 635 (9th Cir. 2007)  
13 (citing Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989)). If the record establishes  
14 the existence of a medically determinable impairment that could reasonably give  
15 rise to symptoms assertedly suffered by a claimant, an ALJ must make a finding as  
16 to the credibility of the claimant's statements about the symptoms and their  
17 functional effect. Robbins, 466 F.3d 880 at 883 (citations omitted). Where the  
18 record includes objective medical evidence that the claimant suffers from an  
19 impairment that could reasonably produce the symptoms of which the claimant  
20 complains, an adverse credibility finding must be based on clear and convincing  
21 reasons. Carmickle v. Commissioner, Social Security Administration, 533 F.3d  
22 1155, 1160 (9th Cir. 2008) (citations omitted). The only time this standard does  
23 not apply is when there is affirmative evidence of malingering. Id. The ALJ's  
24 credibility findings "must be sufficiently specific to allow a reviewing court to  
25 conclude the ALJ rejected the claimant's testimony on permissible grounds and  
26 did not arbitrarily discredit the claimant's testimony." Moisa v. Barnhart, 367  
27 F.3d 882, 885 (9th Cir. 2004).

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1 To find the claimant not credible, an ALJ must rely either on reasons  
 2 unrelated to the subjective testimony (*e.g.*, reputation for dishonesty), internal  
 3 contradictions in the testimony, or conflicts between the claimant's testimony and  
 4 the claimant's conduct (*e.g.*, daily activities, work record, unexplained or  
 5 inadequately explained failure to seek treatment or to follow prescribed course of  
 6 treatment). Orn, 495 F.3d at 636; Robbins, 466 F.3d at 883; Burch, 400 F.3d at  
 7 680-81; SSR 96-7p. Although an ALJ may not disregard such claimant's  
 8 testimony solely because it is not substantiated affirmatively by objective medical  
 9 evidence, the lack of medical evidence is a factor that the ALJ can consider in his  
 10 credibility assessment. Burch, 400 F.3d at 681.

## 11 **2. Analysis**

12 First, the ALJ properly discredited plaintiff's subjective complaints based  
 13 on plaintiff's unexplained failure to seek treatment consistent with the alleged  
 14 severity of plaintiff's subjective symptoms. See Bunnell v. Sullivan, 947 F.2d  
 15 341, 346 (9th Cir. 1991) (en banc) (In assessing credibility, the ALJ may properly  
 16 rely on plaintiff's unexplained failure to request treatment consistent with the  
 17 alleged severity of his symptoms.); Meanel v. Apfel, 172 F.3d 1111, 1114 (9th Cir.  
 18 1999); see Fair, 885 F.2d at 604 (ALJ permissibly considered discrepancies  
 19 between the claimant's allegations of "persistent and increasingly severe pain" and  
 20 the nature and extent of treatment obtained). Here, as the ALJ noted, plaintiff  
 21 initially received a "brief series of epidural injections," but apparently sought no  
 22 treatment for a period of almost two years,<sup>2</sup> and thereafter sought treatment for  
 23 back pain on an "intermittent" basis only. (AR 18-19, 312-13, 320, 329-30, 334-  
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25 <sup>2</sup>Plaintiff argues that his failure to seek medical treatment for almost two years was due to  
 26 his inability to afford medical care during that period. (Plaintiff's Motion at 4-5). The record  
 27 before the ALJ, however, contains no evidence which supports such an assertion. While an ALJ  
 28 may not reject symptom testimony where a claimant provides "evidence of a good reason" for  
 not pursuing medical treatment, Smolen v. Chater, 80 F.3d 1273, 1284 (9th Cir. 1996) (citations  
 omitted), as noted, plaintiff has failed to present such a sufficient reason.

1 35, 338-39). Moreover, the ALJ noted that despite plaintiff's allegations of  
2 disabling pain, there is no evidence that plaintiff sought any intensive treatment  
3 for his alleged back pain such as spinal surgery, ongoing pain management,  
4 ongoing physical therapy, or the use of a TENS unit or assistive ambulation  
5 device. (AR 18).

6 Second, the ALJ properly discredited plaintiff's subjective complaints due  
7 to internal conflicts within plaintiff's own statements and testimony. See Light v.  
8 Social Security Administration, 119 F.3d 789, 792 (9th Cir.), as amended (1997)  
9 (in weighing plaintiff's credibility, ALJ may consider "inconsistencies either in  
10 [plaintiff's] testimony or between his testimony and his conduct"); see also Fair,  
11 885 F.2d at 604 n.5 (9th Cir.1989) (ALJ can reject pain testimony based on  
12 contradictions in plaintiff's testimony). In a Pain Questionnaire dated March 27,  
13 2003, plaintiff stated that he had sharp, constant pain in his back and was unable  
14 to sit, stand or walk for prolonged periods. (AR 94-96). At the administrative  
15 hearing, plaintiff testified that he could not do household chores beyond watering  
16 the plants, occasional light meal preparation, and limited driving. (AR 28-29).  
17 Nonetheless, during a July 2007 consultative medical examination, plaintiff  
18 reported to the examining physician that he had "no problems with dressing,  
19 grooming and bathing himself" and was "able to drive and do dishes, dust[] and  
20 take[] short walks." (AR 234). The ALJ properly concluded that such statements  
21 are inconsistent with plaintiff's allegation that significant subjective symptoms  
22 prevent him from working. (AR 19).

23 Third, the ALJ noted that, at the hearing, plaintiff's thoughts "did not seem  
24 to wander" and that plaintiff "answered [all questions] . . . alertly and  
25 appropriately." (AR 19). The ALJ was permitted to rely on his own observations  
26 of plaintiff at the hearing as one of the several factors affecting plaintiff's  
27 credibility. See Drouin v. Sullivan, 966 F.2d 1255, 1259 (9th Cir. 1992)  
28 (upholding credibility rejection where ALJ's observation of claimant at the



1 hearing was one of several legitimate reasons stated); see also Verduzco v. Apfel,  
2 188 F.3d 1087, 1090 (9th Cir. 1999) (ALJ's reliance on observations of claimant  
3 proper where ALJ pointed to plaintiff's affirmative exhibition of symptoms which  
4 were inconsistent with both medical evidence and plaintiff's other behavior and  
5 did not point to the absence of the manifestation of external symptoms to discredit  
6 plaintiff, referring to the latter as disapproved "sit and squirm" jurisprudence).

7 Finally, an ALJ may discredit a plaintiff's subjective symptom testimony in  
8 part because it is unsupported by objective medical evidence. Burch, 400 F.3d at  
9 681; Rollins, 261 F.3d at 857 ("While subjective pain testimony cannot be rejected  
10 on the sole ground that it is not fully corroborated by objective medical evidence,  
11 the medical evidence is still a relevant factor in determining the severity of the  
12 claimant's pain and its disabling effects.") (citation omitted). Here, the ALJ  
13 reasonably concluded that plaintiff's subjective symptoms were not as severe as  
14 alleged in part due to plaintiff's "generally good performances" during physical  
15 examinations. (AR 19). As the ALJ noted, during examinations by Dr. Dennis  
16 Ainbinder, plaintiff's treating physician, plaintiff had some pain and reduced  
17 range of motion, but displayed "no deficits of gait or neurological functioning or  
18 positive radicular pain signs." (AR 15, 153-55, 164-65, 289-94, 299-300, 304,  
19 310). Dr. Jagvinder Singh, a state-agency examining physician, examined plaintiff  
20 and reported no deficits of gate or general mobility, and no signs of spine-related  
21 neurological deficits. (AR 19, 234-38). The ALJ also noted that the record lacks  
22 evidence that plaintiff's prescribed medication impaired plaintiff's "ability to do  
23 basic work activities and no evidence in the medical record of any significant side  
24 effects." (AR 19) (citing Exhibit 3E [AR 105]) (emphasis added). This Court will  
25 not second-guess the ALJ's reasonable interpretation of the plaintiff's medical  
26 records, even if, as plaintiff suggests, such evidence could give rise to inferences  
27 more favorable to plaintiff. Robbins, 466 F.3d at 882 (citation omitted).

28 Accordingly, plaintiff is not entitled to a reversal or remand on this basis.



**B. The ALJ Properly Evaluated the Medical Evidence**

**1. Pertinent Law**

In Social Security cases, courts employ a hierarchy of deference to medical opinions depending on the nature of the services provided. Courts distinguish among the opinions of three types of physicians: those who treat the claimant (“treating physicians”) and two categories of “nontreating physicians,” namely those who examine but do not treat the claimant (“examining physicians”) and those who neither examine nor treat the claimant (“nonexamining physicians”). Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1996) (footnote reference omitted). A treating physician’s opinion is entitled to more weight than an examining physician’s opinion, and an examining physician’s opinion is entitled to more weight than a nonexamining physician’s opinion.<sup>3</sup> See id. In general, the opinion of a treating physician is entitled to greater weight than that of a non-treating physician because the treating physician “is employed to cure and has a greater opportunity to know and observe the patient as an individual.” Morgan v. Commissioner of Social Security Administration, 169 F.3d 595, 600 (9th Cir. 1999) (citing Sprague v. Bowen, 812 F.2d 1226, 1230 (9th Cir. 1987)).

The treating physician’s opinion is not, however, necessarily conclusive as to either a physical condition or the ultimate issue of disability. Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989) (citing Rodriguez v. Bowen, 876 F.2d 759, 761-62 & n.7 (9th Cir. 1989)). Where a treating physician’s opinion is not contradicted by another doctor, it may be rejected only for clear and convincing reasons. Orn, 495 F.3d at 632 (citation and internal quotations omitted). The ALJ can reject the opinion of a treating physician in favor of another conflicting

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<sup>3</sup>Cf. Le v. Astrue, 529 F.3d 1200, 1201-02 (9th Cir. 2008) (not necessary or practical to draw bright line distinguishing treating physicians from non-treating physicians; relationship is better viewed as series of points on a continuum reflecting the duration of the treatment relationship and frequency and nature of the contact) (citation omitted).

1 medical opinion, if the ALJ makes findings setting forth specific, legitimate  
2 reasons for doing so that are based on substantial evidence in the record. Id.  
3 (citation and internal quotations omitted); Thomas v. Barnhart, 278 F.3d 947, 957  
4 (9th Cir. 2002) (ALJ can meet burden by setting out detailed and thorough  
5 summary of facts and conflicting clinical evidence, stating his interpretation  
6 thereof, and making findings) (citations and quotations omitted); Magallanes, 881  
7 F.2d at 751, 755 (same; ALJ need not recite “magic words” to reject a treating  
8 physician opinion – court may draw specific and legitimate inferences from ALJ’s  
9 opinion). “The ALJ must do more than offer his conclusions.” Embrey v. Bowen,  
10 849 F.2d 418, 421-22 (9th Cir. 1988). “He must set forth his own interpretations  
11 and explain why they, rather than the [physician’s], are correct.” Id. “Broad and  
12 vague” reasons for rejecting the treating physician’s opinion do not suffice.  
13 McAllister v. Sullivan, 888 F.2d 599, 602 (9th Cir. 1989).

14 Although the treating physician’s opinion is generally given more weight, a  
15 nontreating physician’s opinion may support rejecting the conflicting opinion of a  
16 claimant’s treating physician. Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir.  
17 1995). If a nontreating physician’s opinion is based on independent clinical  
18 findings that differ from the findings of the treating physician, the nontreating  
19 physician’s opinion may be considered substantial evidence. Id. at 1041 (citing  
20 Magallanes, 881 F.2d at 751). If that is the case, then the ALJ has complete  
21 authority to resolve the conflict.<sup>4</sup> On the other hand, if the nontreating physician’s  
22 opinion contradicts the treating physician’s opinion but is not based on  
23 independent clinical findings, or is based on the clinical findings also considered  
24 by the treating physician, the ALJ can only reject the treating physician’s opinion  
25 by giving specific, legitimate reasons based on substantial evidence in the record.

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28 <sup>4</sup>Where there is conflicting medical evidence, the Secretary must assess credibility and  
resolve the conflict. Thomas, 278 F.3d at 956-57.

1 Id. (citing Magallanes, 881 F.2d at 755); see Magallanes, 881 F.2d at 751-52  
 2 (Substantial evidence that can support the conflicting opinion of a nonexamining  
 3 medical advisor can include: laboratory test results, contrary reports from  
 4 examining physicians, and testimony from the plaintiff that is inconsistent with the  
 5 treating physician's opinions.).

## 6 **2. Analysis**

7 Plaintiff contends that the ALJ improperly rejected Dr. Ainbinder's opinions  
 8 that plaintiff was essentially unable to return to his previous work and that  
 9 "plaintiff suffered from severe chronic disabling pain." (Plaintiff's Motion at 8-9)  
 10 (citing AR 210). The Court concludes that a remand or reversal is not warranted  
 11 on this basis because the ALJ properly rejected Dr. Ainbinder's opinions for  
 12 specific and legitimate reasons supported by substantial evidence.

13 First, although Dr. Ainbinder opined in progress reports for plaintiff's  
 14 workers' compensation case that plaintiff could not return to work and that  
 15 plaintiff was "disabled" (AR 289-92, 296, 299-300, 304, 310), the ALJ was not  
 16 required to provide any explanation for rejecting such opinions on the ultimate  
 17 issue of disability. See Vincent v. Heckler, 739 F.2d 1393, 1394-95 (9th Cir.  
 18 1984) (An ALJ must provide an explanation only when he rejects "significant  
 19 probative evidence.") (citation omitted). A conclusory opinion that plaintiff was  
 20 unable to work or was "disabled" for workers' compensation purposes is not  
 21 binding on the Commissioner. See Boardman v. Astrue, 286 Fed. Appx. 397, 399  
 22 (9th Cir. 2008)<sup>5</sup> ("[The] determination of a claimant's ultimate disability is  
 23 reserved to the Commissioner . . . a physician's opinion on the matter is not  
 24 entitled to special significance."); Ukolov v. Barnhart, 420 F.3d 1002, 1004 (9th  
 25 Cir. 2005) ("Although a treating physician's opinion is generally afforded the  
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 28 <sup>5</sup>Courts may cite unpublished Ninth Circuit opinions issued on or after January 1, 2007.  
See U.S. Ct. App. 9th Cir. Rule 36-3(b); Fed. R. App. P. 32.1(a).

1 greatest weight in disability cases, it is not binding on an ALJ with respect to the  
 2 existence of an impairment or the ultimate determination of disability.”) (citation  
 3 omitted); 20 C.F.R. § 404.1527(e)(1) (“We are responsible for making the  
 4 determination or decision about whether you meet the statutory definition of  
 5 disability. . . . A statement by a medical source that you are “disabled” or “unable  
 6 to work” does not mean that we will determine that you are disabled.”).

7 Second, an ALJ may properly reject a medical opinion that conflicts with  
 8 the physician’s own treatment notes or the record as a whole. See Bayliss v.  
 9 Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005) (A discrepancy between a  
 10 physician’s notes and recorded observations and opinions and the physician’s  
 11 assessment of limitations is a clear and convincing reason for rejecting the  
 12 opinion.); see also Connett v. Barnhart, 340 F.3d 871, 875 (9th Cir. 2003)  
 13 (affirming ALJ’s rejection of physician’s opinion as unsupported by physician’s  
 14 treatment notes); cf. Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001)  
 15 (an ALJ need not accept a treating physician’s opinions that are conclusory and  
 16 brief, or unsupported by clinical findings or physician’s own treatment notes).  
 17 Here, as the ALJ noted, Dr. Ainbinder’s opinions that plaintiff suffered from  
 18 disabling pain was inconsistent with the treating physician’s examinations of  
 19 plaintiff which did reflect some pain and reduced range of motion, but overall  
 20 were “generally good.” (AR 15, 19, 153-55, 164-65, 289-94, 299-300, 304, 310).  
 21 This Court will not second-guess the ALJ’s reasonable interpretation of the  
 22 medical evidence. Robbins, 466 F.3d at 882.

23 Finally, the ALJ properly rejected Dr. Ainbinder’s opinions in favor of the  
 24 conflicting opinions of Dr. Singh<sup>6</sup> (AR 234-38) and the state-agency reviewing  
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26 <sup>6</sup>Dr. Singh, a consultative physician, examined plaintiff and found, *inter alia*, that  
 27 plaintiff had no problems walking from the waiting room to the examination room or getting on  
 28 and off the examination table; was able to take his shoes off; sat comfortably; had normal gait;  
 (continued...)

1 physicians (AR 240-46, 256-62) – none of whom found any physical limitations  
2 beyond those already properly accounted for in the ALJ’s residual functional  
3 capacity assessment. (AR 15-16, 19-20). Dr. Singh’s opinions were supported by  
4 independent clinical findings (*i.e.*, an Internal Medical Consultation and physical  
5 examination of plaintiff) (AR 234-38), and thus constituted substantial evidence  
6 upon which the ALJ could properly rely to reject Dr. Ainbinder’s opinions. See,  
7 e.g., Tonapetyan, 242 F.3d at 1149 (consultative examiner’s opinion on its own  
8 constituted substantial evidence, because it rested on independent examination of  
9 claimant). The most recent opinions of the reviewing physicians also constituted  
10 substantial evidence supporting the ALJ’s decision since such opinions were, on  
11 the whole, consistent with the examining physician’s opinions and underlying  
12 independent findings and other evidence in the record. See Tonapetyan, 242 F.3d  
13 at 1149 (holding that opinions of nontreating or nonexamining doctors may serve  
14 as substantial evidence when consistent with independent clinical findings or other  
15 evidence in the record); Andrews, 53 F.3d at 1041 (“reports of the nonexamining  
16 advisor need not be discounted and may serve as substantial evidence when they  
17 are supported by other evidence in the record and are consistent with it”). Any  
18 conflict in the properly supported medical opinion evidence was the sole province  
19 of the ALJ to resolve. Andrews, 53 F.3d at 1041.

20 Accordingly, a remand or reversal is not warranted on this basis.

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24 (...continued)

25 had range of motion in the cervical spine within normal limits; had limited range of motion in the  
26 dorsolumbar spine (which the doctor said was “due to poor effort”); had no paravertabral spasm,  
27 tension or tenderness and no loss of lordosis in the back and neck; had normal motor strength,  
28 sensation and reflexes; had straight leg raising within normal limits; and had no neurological  
deficit. (AR 234-38). Dr. Singh concluded that plaintiff could essentially perform a full range of  
medium work (*i.e.*, lift/carry 50 pounds occasionally and 25 pounds frequently; stand and walk  
six hours out of an eight-hour work day; sit without limitation). (AR 16, 238).

**C. The ALJ Did Not Err In Determining That Plaintiff Could Perform His Past Relevant Work**

Plaintiff contends that the ALJ materially erred in concluding that plaintiff could perform his past relevant work as an inboard motor mechanic and industrial truck mechanic (as actually and generally performed). (Plaintiff's Motion at 9-11). Plaintiff appears to argue that the ALJ erred at step four of the sequential evaluation process because (1) the ALJ failed to include in plaintiff's residual functional capacity all limitations related to plaintiff's medically determinable impairments,<sup>7</sup> (2) the vocational expert, upon whom the ALJ relied at step four, mischaracterized the physical and mental demands of plaintiff's past relevant work "as plaintiff performed it"; and (3) the ALJ posed an incomplete hypothetical question to the vocational expert, and therefore the ALJ's finding that plaintiff could return to his past jobs was not supported by substantial evidence. (Plaintiff's Motion at 9-11). Plaintiff is not entitled to a reversal or remand on any of these grounds.

**1. Relevant Law**

At step four of the sequential evaluation process, the Administration may deny benefits when the claimant can perform the claimant's past relevant work as "actually performed," or as "generally" performed. Pinto v. Massanari, 249 F.3d 840, 845 (2001). ALJs routinely rely on the Dictionary of Occupational Titles ("DOT") in determining the skill level of a claimant's past work. Terry v. Sullivan, 903 F.2d 1273, 1276 (9th Cir. 1990) (citations omitted); see also 20 C.F.R. § 404.1566(d)(1) (DOT is source of reliable job information). The DOT is the presumptive authority on job classifications. Johnson v. Shalala, 60 F.3d

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<sup>7</sup>Plaintiff essentially argues that, had the ALJ properly considered plaintiff's "orthopedic injuries and chronic pain, combined with side effects of medication and hypertension," the ALJ would have determined that plaintiff retained the residual functional capacity to do only "light work," which would have supported a finding of disability under "Grid Rules 202.9 and 201.17." (Plaintiff's Motion at 11).

1 1428, 1435 (9th Cir. 1995). The ALJ may also rely on testimony from a  
2 vocational expert. See, e.g., Bailey v. Astrue, 2010 WL 3369152, \*5 (C.D. Cal.  
3 Aug. 24, 2010) (“vocational expert’s testimony constitutes substantial evidence to  
4 support [] ALJ’s Step Four determination that plaintiff can perform his past  
5 relevant work”) (citations omitted).

6 Although the claimant has the burden of proving an inability to perform his  
7 past relevant work, “the ALJ still has a duty to make the requisite factual findings  
8 to support his conclusion.” Id. at 844. To determine whether a claimant has the  
9 residual capacity to perform his past relevant work, the ALJ must ascertain the  
10 demands of the claimant’s former work and then compare the demands with his  
11 present capacity. Villa v. Heckler, 797 F.2d 794, 797-98 (9th Cir. 1986). In  
12 finding that an individual has the capacity to perform a past relevant job, the  
13 determination or decision must contain the following specific findings of fact:  
14 (1) a finding of fact as to the individual’s residual functional capacity; (2) a  
15 finding of fact as to the physical and mental demands of the past job/occupation;  
16 and (3) a finding of fact that the individual’s residual functional capacity would  
17 permit a return to his past job or occupation. SSR 82-62.

## 18 **2. Discussion**

19 First, the ALJ properly assessed plaintiff’s residual functional capacity. As  
20 discussed above, the ALJ properly accounted for limitations related to plaintiff’s  
21 “orthopedic injuries and chronic pain.” As for alleged medication side effects,  
22 plaintiff offers no objective evidence that his medication affected him in the way  
23 he claims, let alone that it interfered with his ability to work. See Osenbrock v.  
24 Apfel, 240 F.3d 1157, 1164 (9th Cir. 2001) (ALJ need not consider side effects  
25 that were not “severe enough to interfere with [plaintiff’s] ability to work.”); see  
26 also Miller v. Heckler, 770 F.2d 845, 849 (9th Cir.1985) (A claimant bears the  
27 burden of demonstrating that his use of medications caused a disabling  
28 impairment.). The only evidence plaintiff presents of limitations due to



1 medication side effects is his own testimony from the administrative hearing  
2 (Plaintiff's Motion at 5) (citing AR 31-33), which, as discussed above, the ALJ  
3 properly found not credible. The record also lacks evidence that plaintiff suffered  
4 functional limitations due to hypertension. As the ALJ noted, plaintiff's medical  
5 records reflect that plaintiff's hypertension was "well controlled when [plaintiff  
6 was] compliant with medication" and that plaintiff experienced no hypertension  
7 related end organ damage. (AR 16) (citing Exhibit 22F [AR 328-39]). The Court  
8 will not second guess the ALJ's reasonable findings which are supported by  
9 substantial evidence in the record.

10 Second, the Court rejects plaintiff's conclusory suggestion that the  
11 vocational expert mischaracterized the physical and mental demands of plaintiff's  
12 past relevant work. (Plaintiff's Motion at 10). Here, the ALJ properly relied on  
13 the vocational expert's testimony (AR 36-37) which was a reasonable  
14 interpretation of the demands of plaintiff's past relevant work in light of plaintiff's  
15 testimony and the related DOT sections. See Andrews v. Shalala, 53 F.3d 1035,  
16 1039-40 (9th Cir. 1995) ("We must uphold the ALJ's decision where the evidence  
17 is susceptible to more than one rational interpretation.") (citation omitted).

18 Finally, the ALJ properly concluded, based on the vocational expert's  
19 testimony, that plaintiff could return to his past relevant work as an inboard motor  
20 mechanic and industrial truck mechanic (as actually and generally performed).  
21 (AR 20). The ALJ's hypothetical question included only those limitations  
22 supported by the record (as discussed above), and thus the vocational expert's  
23 testimony based thereon was substantial evidence supporting the ALJ's decision at  
24 step four.<sup>8</sup> See Bailey, 2010 WL 3369152, \*5; see also Osenbrock, 240 F.3d at  
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26 <sup>8</sup>Contrary to plaintiff's suggestion, the ALJ was not bound to accept as true the  
27 restrictions set forth in hypothetical questions posed by plaintiff's attorney during the hearing.  
28 (Plaintiff's Motion at 11) (citing AR 38-39); see Osenbrock, 240 F.3d at 1164-65 ("An ALJ is  
(continued...)

1 1163-64 (ALJ’s hypothetical question need not include limitations not supported  
 2 by substantial evidence in the record) (citation omitted); Embrey v. Bowen, 849  
 3 F.2d 418, 422 (9th Cir. 1988) (“Hypothetical questions posed to the vocational  
 4 expert must set out *all* the limitations and restrictions of the particular claimant  
 5 . . . .”) (emphasis in original; citation omitted).

6 Accordingly, a remand or reversal is not warranted on any of the above  
 7 grounds.<sup>9</sup>

## 8 **V. CONCLUSION**

9 For the foregoing reasons, the decision of the Commissioner of Social  
 10 Security is affirmed.

11 LET JUDGMENT BE ENTERED ACCORDINGLY.

12 DATED: January 26, 2012

13 /s/

14 Honorable Jacqueline Chooljian  
 15 UNITED STATES MAGISTRATE JUDGE  
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23 <sup>8</sup>(...continued)

24 free to accept or reject restrictions in a hypothetical question that are not supported by substantial  
 25 evidence.”) (citation omitted).

26 <sup>9</sup>To the extent plaintiff suggests that the ALJ in some way erred at step five of the  
 27 sequential evaluation process (Plaintiff’s Motion at 9-11), such an argument would not merit  
 28 relief. Here, since the ALJ found plaintiff “not disabled” at step four (*i.e.*, that plaintiff has the  
 residual functional capacity to perform his past relevant work), the ALJ was not required to  
 conduct an analysis at step five in this case.